

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WISCONSIN

In re:	)	
	)	Bankruptcy Case No. 11-24456-svk
JASON SCHMIDTKE,	)	
	)	
Debtor.	)	
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JASON SCHMIDTKE,	)	Adversary Proceeding No. _____
	)	
Plaintiff,	)	
v.	)	
	)	
HSBC FINANCE CORPORATION,	)	
	)	
Defendant.	)	
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**COMPLAINT FOR VIOLATION OF THE AUTOMATIC STAY**

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NOW COMES, Plaintiff, Jason Schmidtke, by and through his attorneys, DeLadurantey Law Office, LLC, and complains of Defendant, HSBC Finance Corporation, a/k/a HSBC, (hereinafter "HSBC") and alleges to the best of his knowledge, information and belief formed after an inquiry reasonable under the circumstances, the following:

**INTRODUCTION**

**Nature of the Action**

1. This lawsuit arises from the repeated collection attempts of the Defendant, despite the protection of the Automatic Stay as defined in 11 U.S.C. §362.
2. Causes of Action herein are brought under the United States Bankruptcy Code ("Bankruptcy Code"), 11 U.S.C. §101 *et seq.*

Drafted by:  
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### **Jurisdiction and Venue**

3. Pursuant to Bankruptcy Rule 7008, this is a core proceeding as defined in 28 U.S.C. §157(b)(2)(O). This proceeding relates to 11 U.S.C. §§105 and 362.

4. Bankruptcy Rules 7001(1) and (7) require an action of this nature to be filed as an Adversary Proceeding.

5. Jason Schmidtke filed his petition for relief under Chapter 7 of the Bankruptcy Code on March 31, 2011. This Court has jurisdiction under 11 U.S.C. §1331, 28 U.S.C. §1334 and 28 U.S.C. §1367.

### **Parties**

6. At the time of filing, Jason Schmidtke resided at 819 W. South St, Oconomowoc, WI 53066,

7. HSBC is a foreign business corporation with a principal address of 26525 N. Riverwoods Blvd., Mettawa, IL 60045, with registered Wisconsin Agent CT Corporation System, 8040 Excelsior Drive, Suite 200, Madison, WI 53717.

### **BACKGROUND**

8. On March 31, 2011, Jason Schmidtke filed for relief under Chapter 7 of the Bankruptcy Code through his attorney, Nathan E. DeLadurantey, of DeLadurantey Law Office, LLC. *See* Exhibit A.

9. Before the filing of his Chapter 7 case on March 31, 2011, Jason Schmidtke incurred a financial obligation to HSBC.

10. On April 3, 2011, the Clerk of the Bankruptcy Court mailed a copy of the “Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, and Deadlines” to HSBC via electronic transmission, to the electronic address specified by HSBC. *See* Exhibit B.

11. At some time prior to the filing of the above referenced bankruptcy proceeding, the Defendant *voluntarily elected* to receive electronic bankruptcy filings and notices, when they had been listed as a creditor.

12. HSBC has actual notice of the Plaintiff’s bankruptcy case.

13. Defendant, HSBC, is a sophisticated entity, and is well aware of and capable of, reading and understanding the provisions of the "Notice of Filing" as received from the Clerk of the Bankruptcy Court.

14. Since the filing of the bankruptcy case on March 31, 2011, the Defendant has repeatedly attempted to collect a prepetition debt from the Plaintiff.

## **REPEATED CONTACTS**

### **First Contact**

15. Sometime after May 25, 2011, HSBC mailed a billing statement to Mr. Schmidtke asserting that the bill was "past due" and attempting to collect on that balance. *See* Exhibit C.

16. This collection attempt occurred at least fifty five (55) days after the bankruptcy case was filed.

### **Second Contact**

17. On May 26, 2011 at approximately 9:10am, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

18. This collection attempt occurred fifty six (56) days after the bankruptcy case was filed.

### **Third Contact**

19. On May 26, 2011 at approximately 4:52pm, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

20. This collection attempt occurred fifty six (56) days after the bankruptcy case was filed.

### **Third Contact**

21. On May 26, 2011 at approximately 6:59pm, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

22. This collection attempt occurred fifty six (56) days after the bankruptcy case was filed.

#### **Fourth Contact**

23. On June 2, 2011 at approximately 9:18am, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

24. This collection attempt occurred sixty three (63) days after the bankruptcy case was filed.

#### **Fifth Contact**

25. On June 2, 2011 at approximately 2:24pm, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

26. This collection attempt occurred sixty three (63) days after the bankruptcy case was filed.

#### **Sixth Contact**

27. On June 2, 2011 at approximately 7:07pm, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

28. This collection attempt occurred sixty three (63) days after the bankruptcy case was filed.

#### **Seventh Contact**

29. On June 2, 2011 at approximately 8:07pm, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

30. This collection attempt occurred sixty three (63) days after the bankruptcy case was filed.

#### **Eighth Contact**

31. On June 3, 2011 at approximately 9:22am, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

32. This collection attempt occurred sixty four (64) days after the bankruptcy case was filed.

**Ninth Contact**

33. On June 3, 2011 at approximately 2:22pm, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

34. This collection attempt occurred sixty four (64) days after the bankruptcy case was filed.

**Tenth Contact**

35. On June 3, 2011 at approximately 8:05am, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

36. This collection attempt occurred sixty four (64) days after the bankruptcy case was filed.

**Eleventh Contact**

37. On June 4, 2011 at approximately 8:39am, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

38. This collection attempt occurred sixty five (65) days after the bankruptcy case was filed.

**Twelfth Contact**

39. On June 4, 2011 at approximately 12:35pm, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

40. This collection attempt occurred sixty five (65) days after the bankruptcy case was filed.

**Thirteenth Contact**

41. On June 4, 2011 at approximately 8:05pm, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

42. This collection attempt occurred sixty five (65) days after the bankruptcy case was filed.

#### **Fourteenth Contact**

43. On June 5, 2011 at approximately 9:20am, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

44. This collection attempt occurred sixty six (66) days after the bankruptcy case was filed.

#### **Fifteenth Contact**

45. On June 5, 2011 at approximately 12:52am, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

46. This collection attempt occurred sixty six (66) days after the bankruptcy case was filed.

#### **Sixteenth Contact**

47. On June 5, 2011 at approximately 2:01pm, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

48. This collection attempt occurred sixty six (66) days after the bankruptcy case was filed.

#### **Seventeenth Contact**

49. On June 5, 2011 at approximately 7:00pm, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

50. This collection attempt occurred sixty six (66) days after the bankruptcy case was filed.

#### **Eighteenth Contact**

51. On June 6, 2011 at approximately 11:13am, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

52. This collection attempt occurred sixty seven (67) days after the bankruptcy case was filed.

### **Nineteenth Contact**

53. On June 7, 2011 at approximately 11:00am, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

54. This collection attempt occurred sixty eight (68) days after the bankruptcy case was filed.

### **Twentieth Contact**

55. On June 7, 2011 at approximately 8:09pm, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

56. This collection attempt occurred sixty eight (68) days after the bankruptcy case was filed.

### **Twenty First Contact**

57. On June 7, 2011 at approximately 8:38pm, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

58. This collection attempt occurred sixty eight (68) days after the bankruptcy case was filed.

### **Twenty Second Contact**

59. On June 8, 2011 at approximately 8:58am, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

60. This collection attempt occurred sixty nine (69) days after the bankruptcy case was filed.

### **Twenty Third Contact**

61. On June 8, 2011 at approximately 3:16pm, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

62. This collection attempt occurred sixty nine (69) days after the bankruptcy case was filed.

**Twenty Fourth Contact**

63. On June 8, 2011 at approximately 5:55pm, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

64. This collection attempt occurred sixty nine (69) days after the bankruptcy case was filed.

**Twenty Fifth Contact**

65. On June 8, 2011 at approximately 8:00pm, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

66. This collection attempt occurred sixty nine (69) days after the bankruptcy case was filed.

**Twenty Sixth Contact**

67. On June 8, 2011 at approximately 8:41pm, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

68. This collection attempt occurred sixty nine (69) days after the bankruptcy case was filed.

**Twenty Seventh Contact**

69. On June 9, 2011 at approximately 8:18am, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

70. This collection attempt occurred seventy (70) days after the bankruptcy case was filed.

**Twenty Eighth Contact**

71. On June 9, 2011 at approximately 3:35pm, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

72. This collection attempt occurred seventy (70) days after the bankruptcy case was filed.



### **Twenty Ninth Contact**

73. On June 9, 2011 at approximately 8:05pm, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

74. This collection attempt occurred seventy (70) days after the bankruptcy case was filed.

### **Thirtieth Contact**

75. On June 10, 2011 at approximately 8:34am, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

76. This collection attempt occurred seventy one (71) days after the bankruptcy case was filed.

### **Thirty First Contact**

77. On June 10, 2011 at approximately 1:04pm, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

78. This collection attempt occurred seventy one (71) days after the bankruptcy case was filed.

### **Thirty Second Contact**

79. On June 10, 2011 at approximately 5:28pm, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

80. This collection attempt occurred seventy one (71) days after the bankruptcy case was filed.

### **Thirty Third Contact**

81. On June 10, 2011 at approximately 8:03pm, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

82. This collection attempt occurred seventy one (71) days after the bankruptcy case was filed.

#### **Thirty Fourth Contact**

83. On June 11, 2011 at approximately 9:22am, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

84. This collection attempt occurred seventy two (72) days after the bankruptcy case was filed.

#### **Thirty Fifth Contact**

85. On June 11, 2011 at approximately 1:55pm, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

86. This collection attempt occurred seventy two (72) days after the bankruptcy case was filed.

#### **Thirty Sixth Contact**

87. On June 11, 2011 at approximately 6:33pm, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

88. This collection attempt occurred seventy two (72) days after the bankruptcy case was filed.

#### **Thirty Seventh Contact**

89. On June 12, 2011 at approximately 9:17am, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

90. This collection attempt occurred seventy three (73) days after the bankruptcy case was filed.

#### **Thirty Eighth Contact**

91. On June 12, 2011 at approximately 11:26am, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

92. This collection attempt occurred seventy three (73) days after the bankruptcy case was filed.

### **Thirty Ninth Contact**

93. On June 12, 2011 at approximately 1:41pm, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

94. This collection attempt occurred seventy three (73) days after the bankruptcy case was filed.

### **Fortieth Contact**

95. On June 12, 2011 at approximately 3:24pm, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

96. This collection attempt occurred seventy three (73) days after the bankruptcy case was filed.

### **Forty First Contact**

97. On June 13, 2011 at approximately 8:55am, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

98. This collection attempt occurred seventy four (74) days after the bankruptcy case was filed.

### **Forty Second Contact**

99. On June 13, 2011 at approximately 1:38pm, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

100. This collection attempt occurred seventy four (74) days after the bankruptcy case was filed.

### **Forty Third Contact**

101. On June 13, 2011 at approximately 7:25pm, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

102. This collection attempt occurred seventy four (74) days after the bankruptcy case was filed.

#### **Forty Fifth Contact**

103. On June 14, 2011 at approximately 9:06am, an agent or employee of HSBC contacted Mr. Schmidtke via telephone regarding payment on his account.

104. This collection attempt occurred seventy five (75) days after the bankruptcy case was filed.

#### **Count 1 – Willful Violation of the Automatic Stay**

105. Jason Schmidtke restates all above allegations.

106. Upon filing his Chapter 7 bankruptcy on March 31, 2011, the Automatic Stay applied to all of his creditors.

107. HSBC is a creditor.

108. HSBC has neither sought nor been granted relief from the Automatic Stay.

109. HSBC has actual knowledge of Jason Schmidtke's bankruptcy.

110. HSBC has willfully violated the Automatic Stay (11 U.S.C. §362) by attempting to collect on a pre-petition debt.

#### **Trial by Jury**

111. Plaintiff is entitled to, and hereby respectfully demands a trial by jury on all issues so triable.

WHEREFORE, Jason Schmidtke prays that this Court will enter an Order:

- A. declaring HSBC in willful violation of the Automatic Stay;
- B. awarding to Jason Schmidtke actual damages, punitive damages, and all costs and attorney's fees for HSBC's actions; and
- C. for such other and further relief as may be just and proper.

Dated 16<sup>th</sup> day of June, 2011.

DeLadurantey Law Office, LLC



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